

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of Dena Phillips
Vs. Shinn Enterprises, Inc.

ORDER

On Tuesday, November 9, 2004, a telephone hearing was held pursuant to a request for appeal made by Shinn Enterprises, Inc. from a Preliminary Wage Determination Order in favor of Dena Phillips, a former employee. Present and identifying themselves was the wage claimant, Dena Phillips and Greg Shinn on behalf of Shinn Enterprises.

From the testimony and evidence presented, the following Order is made.

Dena Phillips began work for Shinn Enterprises in October of 2003, as a hotel general manager. She left employment on April 11, 2004. Her salary was \$537.50 per week. Ms. Phillips filed a wage claim with the Arkansas Department of Labor after being denied her salary for the last week of work.

Mr. Shinn alleges that during the week in question, Ms. Phillips was out of town to attend management training to which he had sent Ms. Phillips and another employee. Ms. Phillips and the other employee traveled by plane to the training, and Ms. Phillips rented a car at the airport and she and the other employee traveled to the hotel. Mr. Shinn testified that he refused to pay Ms. Phillips because she didn't work that week. Ms. Phillips admits she did not attend the training the first day, however, both she and the witness presented by Shinn Enterprises, testified that she attended the training the rest of the week.

The airfare and hotel expenses were paid by Shinn Enterprises. Mr. Shinn refused to reimburse Ms. Phillips for her rental car expense as it was unauthorized. However, Mr. Shinn admitted during the hearing that he would be liable for shuttle expenses for two employees for that trip. The estimated shuttle expenses for Ms. Phillips and the other employee would have been approximately \$60.00. It is undisputed that Ms. Phillips took \$150 from petty cash for

expenses. Ms. Phillips has presented receipts totaling \$507.37 for trip expenses. This amount includes a rental car amount of 297.80 and gas of \$23.28. After deducting for petty cash, rental car and gas, but crediting estimated shuttle expenses, there is a total of \$95.29 in unreimbursed expenses.

Ms. Phillips is incorrect that she would be due pay for a full day's absence. It is well established that salaried exempt employees may not have deductions made for partial day's absences. Ms. Phillips did not attend the training for one day, therefore she is not due pay for that day. However, the evidence establishes she did attend the rest of the week; therefore she must be paid for this time. Additionally, the evidence is clear that the employer had agreed to pay expenses for the trip, although not for a rental car. Therefore Shinn Enterprises must pay the balance of the expenses, minus the car and gas and the advance from petty cash. From the testimony and evidence presented, the amount due Ms. Phillips is \$525.29. This amount represents Ms. Phillips weekly salary of \$537.50 minus \$107.50 (eight hours of missed work) for a total of \$468 plus unreimbursed expenses of \$95.29 for a total owed of \$525.29.

THEREFORE it is hereby ordered that Shinn Enterprises is indebted to Dena Phillips in the amount of **Five Hundred Twenty Five Dollars and 29 Cents (\$525.29).**


Hearing Officer

12/8/04
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Don Carter vs.
M & M Quick Lube

Order

On Tuesday, October 19, 2004, at 10:00 a.m. a hearing was held pursuant to the appeal filed by M & M Quick Lube from a Preliminary Wage Determination Order finding that it was indebted to Don Carter for \$1000 in back wages. Appearing on behalf on M & M Quick Lube were Nelson Adder, Operations Manager, and John Lawrence, Shop Manager. Mr. Carter appeared on his own behalf. From the testimony, record in the file and other evidence presented at the hearing the following Order is made.

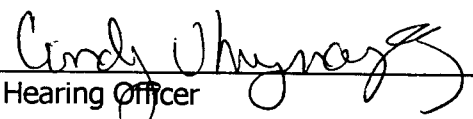
Mr. Carter alleges that he began work for M & M Quick Lube, in preparation for the opening of the business, on June 7, 2004. He testified that he worked for two weeks performing general labor at a rate of \$250 per week and then began working as a sales manager at a salary of \$500 per week. It is undisputed that he left employment on July 9, 2004. During his four weeks of employment, he testified he was paid a total of \$500. Mr. Carter could offer no witnesses to testify that he had indeed performed any work exceeding that for which he was paid during the first two weeks he alleges he worked.

M & M Quick Lube disputes Mr. Carter's testimony. According to Mr. Adder, Mr. Carter worked only three days helping with the opening and then was asked to leave the job site because of a dispute with another employee. This hearing officer finds it odd that Mr. Carter would keep working and, in fact, agree to a promotion if he was performing work and not being paid. Therefore, Mr. Carter cannot meet his burden of proof concerning the first two weeks he alleges he worked.

It is not disputed that Mr. Carter was asked to be a sales manager for Quick Lube around the middle of June. It is also undisputed that his employment was terminated on July 9, 2004. According to testimony from M & M Quick Lube witnesses, there were no contract forms, no price list, no printed brochures for Mr. Carter to work from. His instructions were to make "contacts". M & M Quick Lube did not require a daily activity log. Mr. Carter has submitted four statements from business owners that he contacted during this period. One of those statements was from his wife. Mr. Carter did not disclose this fact to the investigator, and it was disclosed to the hearing officer by M & M Quick Lube.

Although it appears that Mr. Carter did perform some work during the final two weeks of work, Mr. Carter has the burden of proof. The three statements he did submit are some proof of work, but not enough proof of work performed for two weeks. Mr. Carter's credibility is further impeached by the fact one of the statements was from his wife and he failed to disclose that fact. The evidence is insufficient to show how much work was done or whether or not he worked beyond one week.

Therefore, it is hereby ORDERED that the Preliminary Wage Determination Order issued in favor of Mr. Carter be reversed and that M & M Quick Lube is not indebted to Mr. Carter for back wages.


Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

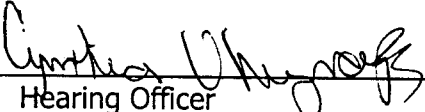
In The Matter of
Cassie Penrod vs.
Hair Care USA/McAdams Mgt

Order

On Tuesday, August 3, 2004, a hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal filed by Hair Care USA from a Preliminary Wage Determination Order finding that Hair Care USA owed Cassie Penrod back wages in the amount of \$118.45.

Notice of the hearing was forwarded by certified mail and regular mail to both parties. Ms. Penrod accepted her notice on July 19th, 2004. Ms. Penrod failed to appear at the appointed hour.

THEREFORE, it is hereby ORDERED that Ms. Penrod's wage claim be dismissed.


Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

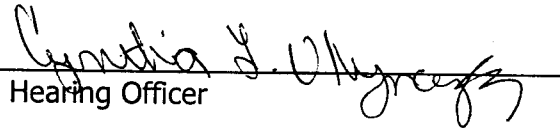
In The Matter of
Angie Crumpton vs.
Jonesboro Institutional Supply

Order

On Tuesday, August 3, 2004, a hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal filed by Jonesboro Institutional Supply from a Preliminary Wage Determination Order finding that Jonesboro Institutional Supply owed Angie Crumpton back wages in the amount of \$120.00.

Notice of the hearing was forwarded by certified mail and regular mail to both parties. Ms. Crumpton's notice was sent to the address reflected on her wage claim and was returned marked "unclaimed". The notice sent by regular mail was not returned. Ms. Crumpton failed to appear at the appointed hour.

THEREFORE, it is hereby ORDERED Ms. Crumpton's wage claim be dismissed.


Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

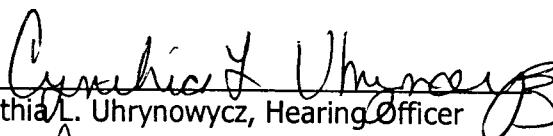
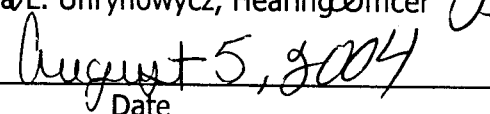
In The Matter of
Amy Coatney vs.
Phoenix Truck Plaza

ORDER

On Tuesday, July 20, 2004, an administrative hearing was held in the offices of the Arkansas Department of Labor. The hearing was held pursuant to an appeal filed by Hans Alatiat of Phoenix Oil Co., Inc., from a preliminary wage determination order finding that Phoenix Oil Co., d/b/a Phoenix Truck Plaza, was indebted to Amy Coatney in the amount of \$240.00. for unpaid wages.

Present and ready for hearing was Amy Coatney. Also present was the Hearing Officer, Cynthia Uhrynowycz. However, not present was Mr. Alatiat or any other representative of Phoenix Oil Co. d/b/a Phoenix Truck Plaza.

THEREFORE it is hereby Ordered that Phoenix Oil Co., d/b/a Phoenix Truck Plaza is indebted to Amy Coatney in the amount of \$240.00.


Cynthia L. Uhrynowycz, Hearing Officer

Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

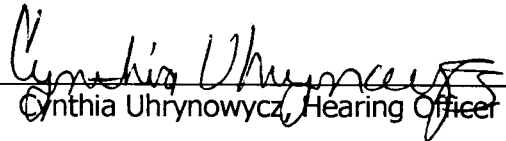
**In the Matter of
Micheal McVay vs.
Digitallink Satellites**

Order

On Tuesday, April 20, 2004, a hearing was held in the offices of the Arkansas Department of Labor concerning an appeal from a Preliminary Wage Determination Order against Digitallink Satellites in favor of Micheal McVay.

Notice of the hearing was sent by certified mail to Craig Christianson of Digitalink Satellites. Com, 251 SW Wilshire Boulevard, Suite 124-304, Burleson, TX 76028, and the return receipt was signed for on April 4, 2004. Additionally, the notice was sent by regular mail. The notices have not been returned. Mr. McVay appeared and was ready for the hearing. Digitalink failed to appear or send a representative. Furthermore Digitalink has failed to communicate on this manner after notice.

THEREFORE, it is hereby ORDERED that Digitalink is indebted to Micheal McVay in the amount of \$668.00 for unpaid wages.


Cynthia Uhryniewicz, Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

***In The Matter of
Christopher Sebourn
Vs. DRC of Ark, Inc d/b/a/
Unishippers***

Order

On Tuesday, March 16, 2004, a hearing was held in the offices of the Arkansas Department of Labor. The purpose of the hearing was to hear the appeal filed by DRC of Ark ("DRC") from a Preliminary Wage Determination Order finding that DRC was indebted to Christopher Sebourn in the amount of \$375.30. Present on behalf of DRC was Danny Cook. The claimant, Christopher Sebourn, appeared on his own behalf. The undersigned served as Hearing Officer.

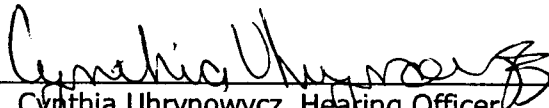
From the testimony and evidence presented, as well as additional submissions to the record, the Hearing Officer finds as follows.

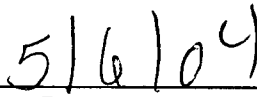
Christopher Sebourn was employed by DRC d/b/a Unishippers as a salesman and was paid a salary of pay of \$125 per day. What is in dispute in this case is the date of termination. The employer alleges that Mr. Sebourn's last day was October 24, 2003. Mr. Sebourn alleges his last day was October 29, 2003. Mr. Sebourn and DRC agree that he was paid through October 24, 2004. However, Mr. Sebourn alleges that he performed work on October 27, 28, and 29th. In support of his allegations, Mr. Sebourn has presented a resignation letter dated October 29th, and cell phone records indicating that calls were made to the offices of DRC on those days. He also presented e-mails dated October 22nd and October 23rd in which Danny Cook asked him if he was resigning and he replied he was not.

It is undisputed that Mr. Sebourn was paid a salary. Had Mr. Sebourn worked 20 hours a day, his agreed salary was \$125 per day, and not more. If he worked one hour a day, his

salary was \$125 per day. In light of the cell phone calls, his letter of resignation, and the e-mails of October 22nd and October 23rd, Mr. Sebourn has presented sufficient evidence to support his contention that he was employed until October 29, 2003.

THEREFORE it is hereby ORDERED that DRC of Ark, Inc. d/b/a Unishippers is indebted to Christopher Sebourn in the amount of \$375.00


Cynthia Uhrynowycz, Hearing Officer


Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Elmer McGowan vs.
DSI of Little Rock

ORDER

On Tuesday, February 17, 2004, a hearing was held at the offices of the Arkansas Department of Labor. The purpose of the hearing was to consider the appeal filed by DSI of Little Rock from a Preliminary Wage Determination Order finding that DSI of Little Rock was indebted to Elmer McGowan for unpaid wages of \$350.00. Present at the hearing was Elmer McGowan, claimant, and Stefan Goodson on behalf of DSI of Little Rock. The undersigned served as Hearing Officer. From the facts and evidence presented, the following ORDER is made.

Elmer McGowan was employed by DSI of Little Rock from May 22, 2003, until October 17, 2003, as a delivery driver and paid \$175 per week. Mr. McGowan was not paid for his final two weeks of work. DSI of Little Rock alleges that they have refused to pay Mr. McGowan because parts were damaged during a delivery to North Point Toyota. Mr. McGowan testified that he only had the parts in his possession for about two hours and that he did not damage the parts.

An employer may claim a set off for the amount of damages owed, but the employer has the burden of proving the set off. In this case the employer can show nothing to prove that Mr. McGowan damaged the parts and not that they were damaged before they arrived at DSI or after they arrived at North Point Toyota. In fact, during questioning, Mr. Goodson became hostile, belligerent and began yelling and left the hearing. Although the parts were in Mr. McGowan's possession, he testified that the parts passed through several hands before being loaded onto his truck.

THEREFORE, it is hereby ordered that DSI of Little Rock is indebted to Elmer McGowan in the amount of \$350.00.

Cindy Uhrynysz
Cindy Uhrynysz, Hearing Officer
4-23-04
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

**In The Matter of
Danyel Mier vs.
T-Ricks**

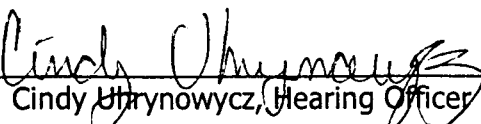
Order

On Tuesday, February 17, 2004, an administrative hearing was held in the offices of the Arkansas Department of Labor, pursuant to an appeal filed by Gordon M. Allen, d/b/a T-Ricks, from a Preliminary Wage Determination Order finding that T-Ricks was indebted to Danyel Mier in the amount of \$200.85. Both the claimant and respondent were present. From the testimony and other evidence presented, this Order is made.

Danyel Mier was employed by T-Ricks from September 9, 2003, until October 17, 2003. The final week she worked, it is undisputed that she worked 39 hours at a rate of pay of \$6.00 per hour. The respondent refused to pay her wages for that time, alleging that he had loaned her \$50.00, that she had outstanding store charges and that her cash register was short. The respondent testified that the cash register shortage was charged to her, however, no agreement existed before hand that she would be responsible. Ms. Mier contested the fact the register was short at all.

However, Ms. Mier did admit at the hearing that she had received a \$50.00 loan and she admitted to store charges in the amount of \$100.79. She originally claimed \$234.00 in unpaid wages.

THEREFORE, it is hereby ORDERED that Gordon M. Allen d/b/a T-Ricks is indebted to Danyel Mier in the amount of \$83.21.


Cindy Utrynowycz, Hearing Officer

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

In The Matter of
Debra Carpenter vs.
Environmental Consulting Operations, Inc.

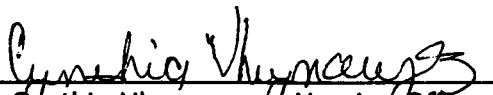
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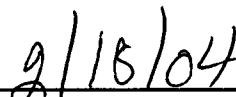
On Thursday, January 15, 2004, a hearing was held in the offices of the Arkansas Department of Labor concerning the matter of Debra Carpenter vs. Environmental Consulting Operations, Inc. ("ECO") This hearing was held pursuant to an appeal filed by Debra Carpenter from an ultimate finding that she was owed \$247.11 in back wages. ECO agrees Ms. Carpenter is owed \$247.11 and has tendered a check for the net amount of wages. Present at the hearing was Ms. Carpenter, the claimant, and Bruce Shackleford, President of ECO. The undersigned presided as hearing officer.

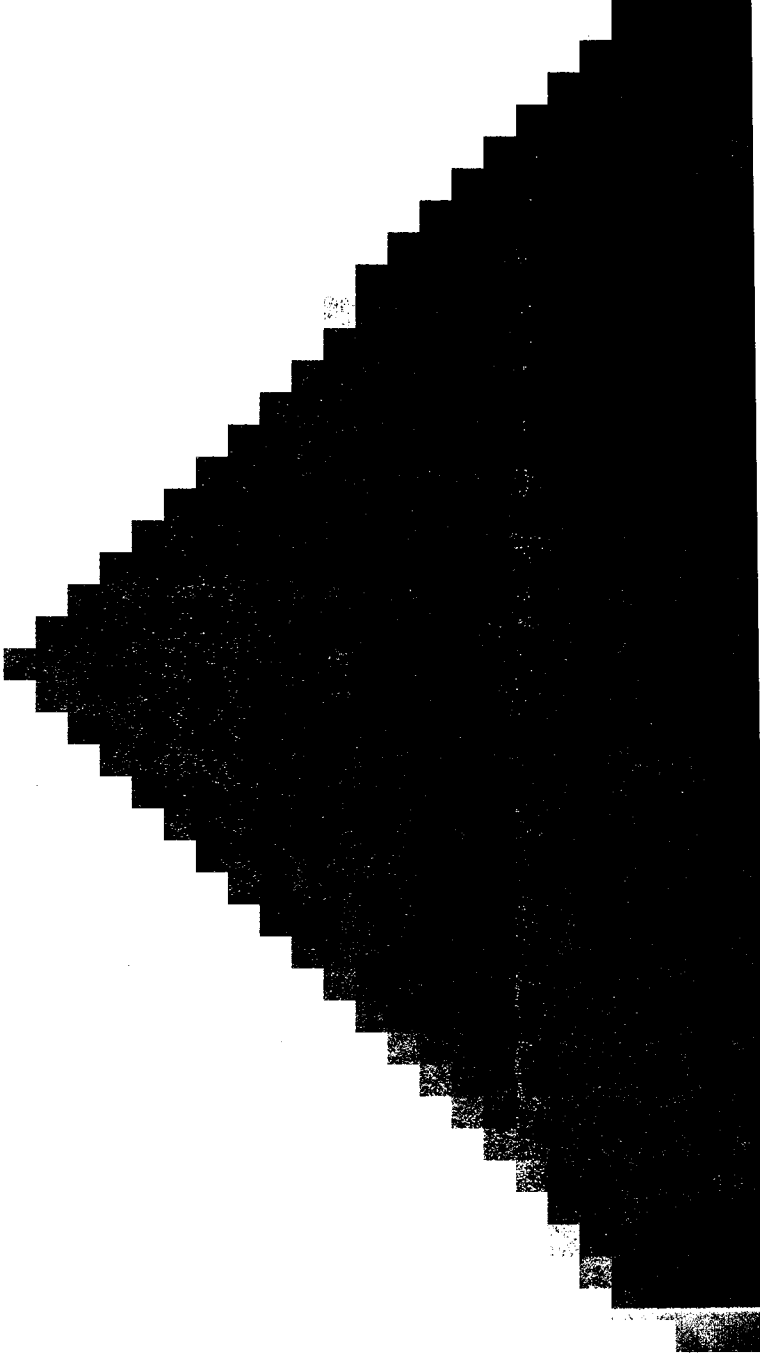
Ms. Carpenter argues that she is due approximately \$450 from ECO. However, Ms. Carpenter, who acted as office manager, submitted a letter of resignation in which she stated her last paycheck, including vacation, should be for approximately \$297.37. Mr. Shackleford seeks deductions for Ms. Carpenter's conduct of personal business and for cell phone calls made. He also disputes the amount of vacation time she wants to claim. Ms. Carpenter is bound by her letter of resignation, in which she made an admission against party interest that she was due \$297.37. It appears that Ms. Carpenter did incur cell phone charges for personal calls and was inaccurate as to the amount of vacation owed. As Ms. Carpenter was an hourly employee, she is not entitled to pay for absences from work.

THEREFORE, It is hereby Ordered that ECO is indebted to Debra Carpenter in the gross amount of \$247.11. The Hearing Officer notes that ECO has submitted a check in payment of these wages. If Ms. Carpenter fails to accept this payment within the next ten days, evidenced

by her signature and return of the receipt letter originally sent to her on January 5, 2004, this matter will be closed and the payment returned to ECO. The Claimant is reminded that if she disagrees with this Order, she has three years from the date the wages were earned to file suit.


Cynthia Uhrynowych, Hearing Officer


Date



BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JAMES LLOYD THARP
ROGER ETHAN NIVENS
RICHARD L. CHAMBERS

COMPLAINANTS

VS.

LARRY ADAMS
d/b/a LARRY ADAMS CONSTRUCTION

RESPONDENT

ORDER

HISTORY:

On Wednesday, December 29, 2004, a hearing was held in the offices of the Arkansas Department of Labor as a result of Larry Adams' contest of the Department's assessment of wages due two employees, James L. Tharp and Roger E. Nivens, and a wage claim filed by Richard L. Chambers for work performed at Cossatot River State Park. Notification was mailed on November 22, 2004 to all parties. Present at the hearing were Denise Oxley, Chief Legal Counsel for the Department of Labor, James L. Tharp and Roger E. Nivens. No one appeared on behalf of Richard Chambers or Larry Adams Construction. Rebecca Bryant served as Hearing Officer.

APPLICABLE LAW:

Ark. Code Ann. §11-4-303.

FINDINGS OF FACT AND CONCLUSION OF LAW:

A wage claim was received by the Arkansas Department of Labor on February 24, 2004 from James Lloyd Tharp alleging that Larry Adams Construction owed him wages

totaling \$960.00 for 64 hours of work performed from January 29, 2004 through February 11, 2004. The claim form shows Mr. Tharp's rate of pay as \$15.00 per hour. Mr. Tharp testified, under oath, that he personally signed the claim form introduced as Agency Exhibit 3.

The Department of Labor also received a wage claim from Roger Ethan Nivens on February 24, 2004 alleging Larry Adams Construction owed him wages totaling \$768.00 for 64 hours of work performed from January 29, 2004 through February 11, 2004. His claim form shows his rate of pay as \$12.00 per hour. Mr. Nivens testified, under oath, that he personally signed the claim form introduced as Agency Exhibit 4.

Richard Chambers did not appear. Therefore, his claim is dismissed and will no longer be pursued by the agency.

The employer failed to appear or otherwise defend.

IT IS THEREFORE CONSIDERED AND ORDERED that Larry Adams d/b/a Larry Adams Construction pay to the order of the Arkansas Department of Labor the sum of \$1,728.00 on behalf of the two employees named above.

James L. Salkeld
Director of Labor

By: Rebecca J. Bryant
Rebecca J. Bryant, Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, Arkansas

DATE: 12/29/04